



JI-WA-007-001

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SPOKANE COUNTY, WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

TOMMY P. by GORDON BOVEY, his  
Guardian ad Litem, and on behalf  
of all others similarly situated,

Plaintiffs,

vs.

SPOKANE SCHOOL DISTRICT #81, a  
public corporation; JUDITH A.  
ALEXENDER, President; R. E.  
JORGENSEN, Vice President; JOHN  
R. WARREN, LARRY R. VANDERVERT  
and WILLIAM W. THOMAS in their  
capacity as members of the Spokane  
School District #81 Board of  
Directors; DR. WALTER A. HITCHCOCK  
in his capacity as Superintendent of  
Schools; and

FRANK J. BROUILLET, in his capacity  
as the Superintendent of Public  
Instruction;

BOARD OF COMMISSIONERS, Spokane County.

Defendants.

No. 224974

COMPLAINT

COMES NOW the plaintiff Tommy P. in behalf of himself and  
all others similarly situated, by and through his Guardian Ad  
Litem Gordon Bovey, and counsel John Jarrett and alleges as  
follows:

I. PARTIES

Plaintiff, Tommy P., is enrolled in the \_\_\_\_\_ grade at  
Garfield Elementary School in the Spokane School District #81. He  
is a citizen of the United States and a resident of the State of  
Washington. Tommy P. is currently indefinitely housed in the  
Spokane County Juvenile Detention Center pursuant to order of



1 Juvenile Court No. J23287.

2 Spokane School District #81 is a public corporation which,  
3 through its Board of Directors, administers and regulates all  
4 public schools within its District. The schools are administered  
5 and the boards policies are executed by the Superintendent of  
6 Schools, Dr. Walter Hitchcock.

7 Defendants Judith A. Alexander, R. E. Jorgensen, John R.  
8 Warren, Larry R. Vandervert and William W. Thomas are members of  
9 the Spokane County District #81 School Board and, as such, have  
10 the authority and responsibility to promulgate and approve policy  
11 matters of the school district including but not limited to those  
12 involving allocation of resources, curriculum and scope and  
13 extension, of services.

14 Defendant, Spokane County, is the local governmental  
15 entity mandated by R.C.W. 13.20.010 and 13.16.030 to establish  
16 and control the Spokane County Juvenile Detention Center.

17 Defendant Brouillet is the superintendent of public  
18 instruction in the State of Washington, and as such has the  
19 authority and responsibility to regulate the local public school  
20 districts and to require and enforce their compliance with all  
21 pertinent laws, regulations and policy directives.

22 II. CLASS ACTION ALLEGATIONS

23 This action is brought by the plaintiff, Tommy P. on behalf  
24 of himself and all other persons similarly situated pursuant to  
25 CR 23(a), and (b)(2). This action is properly maintainable as a  
26 class action by reason of the following: The class of plaintiffs  
27 consists of all those juveniles, of compulsory school age, who  
28 are present and future detainees of the Spokane County Juvenile  
29 Detention facility and who are, while involuntarily detained,  
30

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1 being deprived of an academic education as mandated by the 5th  
2 and 14th Amendments of the United States Constitution, the  
3 Washington State Constitution Articles IX and XXVI, and the  
4 Revised Code of Washington Title 28A, § 02.010, 02.040, §13.010  
5 and Title 28A, § 27.010.

6 The questions of law and fact are common to the class in  
7 that the representative plaintiff and members of the class are  
8 being similarly physically detained and deprived of an educational  
9 opportunity. The claims of the representative party are typical  
10 of the claims of the class as a whole, in that each and every  
11 claim herein is equally applicable to each member of the class;  
12 none are unique to the named plaintiff. The representative party  
13 will fairly and adequately protect the interests of the class.

14 The parties opposing the class have acted and refused to  
15 act on grounds generally applicable to the class as a whole,  
16 pursuant to CR 23(b)(2), in that the defendant's have failed to  
17 provide educational facilities, equipment, personnel and other  
18 resources to each and every member of the class of plaintiffs for  
19 reasons common to each member of the class.

20 III. FACTS

21  
22 Tommy P. is a student in good standing regularly enrolled  
23 in Garfield Elementary School within Spokane School District #81.  
24 On June 10, 1975, plaintiff Tommy P. was confined to the Spokane  
25 Juvenile Detention Center pursuant to order dated June 10, 1975,  
26 entered in Cause # J23287.

27 Tommy P. has been unable to attend regular classes at  
28 Garfield Elementary School since his involuntary confinement.

29 Tommy P. has not been provided educational services and/or  
30 educational counseling by any qualified and certified personnel

1 since his involuntary confinement on or about June 10, 1975,  
2 although the same has been requested.

3  
4 IV. AUTHORITY

5 R.C.W. 28A.27.010 reads as follows:

6 "...All parents, guardians and other persons  
7 in this state having custody of any child  
8 fifteen years of age and under eighteen years  
9 of age shall cause such child to attend the  
10 public school of the district in which the  
11 child resides for the full time when such  
12 school may be in session or to attend a private  
13 school for the same time excepting when the  
14 school district superintendent determines that  
15 such child is physically or mentally unable to  
16 attend school or has already attained a reason-  
17 able proficiency in the branches required by  
18 law...."

13 R.S.W. 13.16.030 reads as follows:

14 "Mandatory function of counties. The construc-  
15 tion, acquisition and maintenance of juvenile  
16 detention facilities for dependent, wayward and  
17 delinquent children, separate and apart from  
18 the detention facilities for adults, is hereby  
19 declared to be a mandatory function of the several  
20 counties of the state."

18 The United States Constitution, Amendments 5th and 14th.

19 The Washington State Constitution Articles IX and XXVI

20 read as follows:

21 "PREAMBLE. - It is the paramount duty of the  
22 state to make ample provision for the education  
23 of all children residing within its borders,  
24 without distinction or preference on account of  
25 race, color, caste, or sex."

25 "...Fourth. Provision shall be made for the  
26 establishment and maintenance of systems of  
27 public schools free from sectarian control,  
28 which shall be open to all the children of said  
29 state...."

28 R.C.W. 28A.13.010 reads as follows:

29 "There is established in the office of the  
30 superintendent of public instruction a division  
31 of special education for handicapped children,

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1 to be known as the division for handicapped  
2 children.

3 Handicapped children are those children in  
4 school or out of school who are temporarily  
5 or permanently retarded in normal educational  
6 processes by reason of physical or mental  
7 handicap, or by reason of emotional  
8 maladjustment, or by reason of other handicap,  
9 and those children who have specific learning  
10 and language disabilities resulting from  
11 perceptual-motor handicaps, including problems  
12 in visual and auditory perception and integration.

13 The superintendent of public instruction shall  
14 require each school district in the state to  
15 insure an appropriate educational opportunity for  
16 all handicapped children of common school age...."

17 R.C.W. 28A.02.010 reads as follows:

18 "General public school system. A general and  
19 uniform system of public schools embracing the  
20 common schools shall be maintained throughout  
21 the state of Washington in accordance with  
22 Article IX of the State Constitution."

23 R.C.W. 28A.02.040 reads as follows:

24 "Schools to be free from sectarian influence. Sec  
25 Article IX, Section 4, and Article XXVI, state  
26 Constitution."

27 FIRST CAUSE OF ACTION AGAINST ALL NAMED DEFENDANTS:

28 The actions of the <sup>plaintiff</sup> defendants, and each of the  
29 defendants, deprives the plaintiff and his class of their right  
30 to an education guaranteed them by the <sup>Equal Protection</sup> clause and due process  
31 of the 14th Amendment to the United States Constitution, and by  
32 Article IX, Section 1 and Article XXVI of the Washington State  
33 Constitution.

34 SECOND CAUSE OF ACTION VS. DEFENDANT SPOKANE COUNTY  
35 WASHINGTON:

36 The actions of defendant Spokane County, by failing to  
37 enroll the named plaintiff and his class in a suitable and  
38 appropriate education institution is in violation of R.C.W.

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1 27A.27.010, which requires every child in the State of Washington  
2 under 16 years of age to attend a licensed educational institution.

3 THIRD CAUSE OF ACTION VS. DEFENDANT SCHOOL DISTRICT #81:

4 The actions of defendant School District #81, in  
5 refusing to make educational resources available to the named  
6 plaintiff and to the class he represents, are in violation of  
7 R.C.W.<sup>9A</sup> 13.010 which requires this defendant to provide an  
8 appropriate educational opportunity for all handicapped children  
9 of common school age.

10  
11 FOURTH CAUSE OF ACTION VS. DEFENDANT BROUILLET; AND THE  
12 STATE OF WASHINGTON DEPARTMENT OF PUBLIC INSTRUCTION.

13 The actions of Superintendent Brouillet, in refusing  
14 to require School District #81 to provide an appropriate  
15 educational opportunity to the plaintiff and his class are in  
16 violation of R.C.W. 28A.13.010.

17 INJURY

18 Plaintiffs are and will continue to suffer irreparable  
19 harm and injury at the actions of defendants, including, but not  
20 limited to the following:

- 21 a. Disruption and impairment of their personal, social  
22 and peer group development.
- 23 b. Emotional anguish resulting from ridicule, rejection,  
24 loneliness and insecurity.
- 25 c. Continuing and irreversible harm to their futures as  
26 students, wage-earners, citizens and members of society.
- 27 d. Loss of normal educational progress toward careers and  
28 toward advanced educational goals.
- 29 e. Deterioration of proper relations with authority.
- 30 f. Increased loss of interest in and frustration with

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1 school and academic matters.

2 g. Development of emotional and behavioral signs of  
3 disorientation and boredom.

4 h. Increased likelihood of becoming part of a "self-  
5 fulfilling prophecy", propelling him toward academic, social and  
6 economic failure.

7 WHEREFORE, plaintiff prays that this Court:

8 (1) Declare that the named plaintiff and those similarly  
9 situated, have the right to an appropriate educational opportunity  
10 pursuant to R.C.W. 28A.13.010 and pursuant to Articles IX and  
11 XXVI of the Washington Constitution and the statutes enforcing  
12 these Articles; and pursuant to the 14th Amendment to the  
13 Constitution of the United States.

14 (2) Order that defendant Spokane County submit to this  
15 court a report identifying all those in detention and not  
16 receiving educational exposure, and an educational plan devised  
17 for each detainee directed to meet his or her unique needs,  
18 abilities and/or limitations.

19 (3) Order that the defendant's either jointly or  
20 separately provide suitable educational facilities, equipment,  
21 personnel and resources to the named plaintiff and the class of  
22 plaintiff's that is substantially equal to that provided to non-  
23 institutionalized public school students within Spokane County;  
24 and that is directed to the unique needs, abilities and/or  
25 limitations of each.

26 (4) Order that defendant's jointly or separately provide  
27 for the continued education of all those involuntarily housed  
28 in the Spokane County Juvenile Detention facility.

29 (5) Order that the defendant's provide tutoring and/or  
30

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1 other appropriate compensatory education, to compensate plaintiff  
2 for educational opportunities lost due to defendant's  
3 unconstitutional and unlawful exclusion of plaintiff from the  
4 educational system.

5 (6) Further relief as the court deems just and proper.  
6

7 Respectfully Submitted,  
8

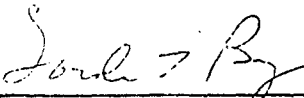
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11 JOHN JARRETT  
12 Attorney for Plaintiff

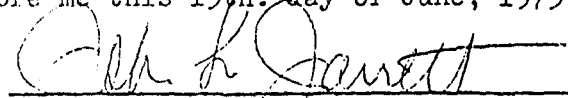
13 STATE OF WASHINGTON )  
14 COUNTY OF SPOKANE ) ss.

15 GORDON BOVEY, being first duly sworn upon oath, deposes  
16 and says:

17 That he is the Guardian Ad Litem for the plaintiff, Tommy  
18 P., in the above-entitled action; that he has read the above  
19 and foregoing Complaint, knows the contents thereof and believes  
20 the same to be true.

21   
22 GORDON BOVEY

23 SUBSCRIBED AND SWORN to before me this 13th. day of June, 1975.  
24

25   
26 NOTARY PUBLIC in and for the State  
27 of Washington, residing at Spokane  
28